

AMENDED IN SENATE APRIL 1, 2013

**SENATE BILL**

**No. 242**

---

**Introduced by Senator Wyland**

February 12, 2013

---

An act to ~~amend~~ add Section 2699 of 27567 to the Labor Streets and Highways Code, relating to ~~employment~~ transportation.

LEGISLATIVE COUNSEL'S DIGEST

SB 242, as amended, Wyland. ~~Employees: civil penalties. Toll collection: alternative technologies.~~

*Existing law requires the Department of Transportation, in cooperation with the Golden Gate Bridge, Highway and Transportation District and all known entities planning to implement a toll facility, to develop and adopt functional specifications and standards for an automatic vehicle identification system, as specified, and generally requires any automatic vehicle identification system purchased or installed after January 1, 1991, to comply with those specifications and standards. Existing federal law, pursuant to the Moving Ahead for Progress in the 21st Century Act, requires all toll facilities on federal-aid highways to implement technologies or business practices that provide for the interoperability of electronic toll collection programs no later than a specified date.*

*This bill would authorize the Department of Transportation and local and regional transportation agencies with existing or planned toll facilities to conduct a market test of automated toll collection technologies as an alternative to the existing radio-frequency identification tolling technology, in order to identify opportunities to facilitate lower cost tolling infrastructure, lower related operating costs, and more rapid deployment of high-occupancy toll lane networks. The*

*bill would allow the test of tolling technologies that may not meet the interoperability requirements in existing law. The bill would authorize pilot projects in that regard for a period of up to 4 years commencing January 1, 2014. The bill would require any vendor participating in a pilot project to cover all costs incurred by the participating agency in operating the project. The bill would require each participating agency to make a specified report by June 1, 2018, to the chairpersons of the Senate Committee on Transportation and Housing and the Assembly Committee on Transportation, and to the Governor.*

~~Under existing law, the Labor Code Private Attorneys General Act of 2004, a provision providing for a civil penalty to be assessed and collected by the Labor and Workforce Development Agency or any of its departments, divisions, commissions, boards, agencies, or employees, for a violation of certain provisions affecting employees, may, as an alternative, be recovered through a civil action brought by an aggrieved employee on behalf of himself or herself and other current or former employees pursuant to specified procedures.~~

~~This bill would make nonsubstantive changes to the provision referenced above.~~

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~-yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1    *SECTION 1. Section 27567 is added to the Streets and*  
 2    *Highways Code, to read:*  
 3    *27567. (a) The Department of Transportation, and local and*  
 4    *regional transportation agencies with existing or planned toll*  
 5    *facilities within their respective jurisdictions, may conduct a market*  
 6    *test of automated toll collection technologies as an alternative to*  
 7    *the existing radio-frequency identification tolling technology, in*  
 8    *order to identify opportunities to facilitate lower cost tolling*  
 9    *infrastructure, lower related operating costs, and more rapid*  
 10   *deployment of high-occupancy toll lane networks. Notwithstanding*  
 11   *Section 27565 or any other provision of law, the test may include*  
 12   *the deployment of tolling technology that may or may not meet*  
 13   *interoperability requirements.*  
 14    *(b) The agencies referenced in subdivision (a) may undertake*  
 15    *alternative tolling technology pilot projects in the state for a period*  
 16    *of up to four years, commencing January 1, 2014. Any vendor*

1 *electing to participate in a pilot project shall cover all costs*  
2 *incurred by the state or local or regional transportation agency*  
3 *in operating the pilot project, including the cost of preparing and*  
4 *submitting the summary report required by subdivision (c).*

5 *(c) Each agency that undertakes a pilot project pursuant to this*  
6 *section shall prepare a summary report that discusses the*  
7 *effectiveness of the technology, market performance, congestion*  
8 *management results, safety issues, implementation and related*  
9 *obstacles and opportunities, and other relevant factors. The*  
10 *summary report shall be submitted on or before June 1, 2018, to*  
11 *the chairpersons of the Senate Committee on Transportation and*  
12 *Housing and the Assembly Committee on Transportation, and to*  
13 *the Governor.*

14 ~~SECTION 1. Section 2699 of the Labor Code is amended to~~  
15 ~~read:~~

16 ~~2699. (a) Notwithstanding any other law, any provision of this~~  
17 ~~code providing for a civil penalty to be assessed and collected by~~  
18 ~~the Labor and Workforce Development Agency or any of its~~  
19 ~~departments, divisions, commissions, boards, agencies, or~~  
20 ~~employees, for a violation of this code, may, as an alternative, be~~  
21 ~~recovered through a civil action brought by an aggrieved employee~~  
22 ~~on behalf of himself or herself and other current or former~~  
23 ~~employees pursuant to the procedures specified in Section 2699.3.~~

24 ~~(b) For purposes of this part, "person" has the same meaning~~  
25 ~~as defined in Section 18.~~

26 ~~(c) For purposes of this part, "aggrieved employee" means any~~  
27 ~~person who was employed by the alleged violator and against~~  
28 ~~whom one or more of the alleged violations was committed.~~

29 ~~(d) For purposes of this part, "cure" means that the employer~~  
30 ~~abates each violation alleged by any aggrieved employee, the~~  
31 ~~employer is in compliance with the underlying statutes as specified~~  
32 ~~in the notice required by this part, and any aggrieved employee is~~  
33 ~~made whole.~~

34 ~~(e) (1) For purposes of this part, whenever the Labor and~~  
35 ~~Workforce Development Agency, or any of its departments,~~  
36 ~~divisions, commissions, boards, agencies, or employees, has~~  
37 ~~discretion to assess a civil penalty, a court is authorized to exercise~~  
38 ~~the same discretion, subject to the same limitations and conditions,~~  
39 ~~to assess a civil penalty.~~

~~(2) In any action by an aggrieved employee seeking recovery of a civil penalty available under subdivision (a) or (f), a court may award a lesser amount than the maximum civil penalty amount specified by this part if, based on the facts and circumstances of the particular case, to do otherwise would result in an award that is unjust, arbitrary and oppressive, or confiscatory.~~

~~(f) For all provisions of this code except those for which a civil penalty is specifically provided, there is established a civil penalty for a violation of these provisions, as follows:~~

~~(1) If, at the time of the alleged violation, the person does not employ one or more employees, the civil penalty is five hundred dollars (\$500).~~

~~(2) If, at the time of the alleged violation, the person employs one or more employees, the civil penalty is one hundred dollars (\$100) for each aggrieved employee per pay period for the initial violation and two hundred dollars (\$200) for each aggrieved employee per pay period for each subsequent violation.~~

~~(3) If the alleged violation is a failure to act by the Labor and Workplace Development Agency, or any of its departments, divisions, commissions, boards, agencies, or employees, there shall be no civil penalty.~~

~~(g) (1) Except as provided in paragraph (2), an aggrieved employee may recover the civil penalty described in subdivision (f) in a civil action pursuant to the procedures specified in Section 2699.3 filed on behalf of himself or herself and other current or former employees against whom one or more of the alleged violations was committed. Any employee who prevails in any action shall be entitled to an award of reasonable attorney's fees and costs. This part shall not operate to limit an employee's right to pursue or recover other remedies available under state or federal law, either separately or concurrently with an action taken under this part.~~

~~(2) An action shall not be brought under this part for any violation of a posting, notice, agency reporting, or filing requirement of this code, except where the filing or reporting requirement involves mandatory payroll or workplace injury reporting.~~

~~(h) An action shall not be brought under this section by an aggrieved employee if the agency or any of its departments, divisions, commissions, boards, agencies, or employees, on the~~

1 same facts and theories, cites a person within the timeframes set  
2 forth in Section 2699.3 for a violation of the same section or  
3 sections of the Labor Code under which the aggrieved employee  
4 is attempting to recover a civil penalty on behalf of himself or  
5 herself or others or initiates a proceeding pursuant to Section 98.3.

6 (i) ~~Except as provided in subdivision (j), civil penalties~~  
7 ~~recovered by aggrieved employees shall be distributed as follows:~~  
8 ~~75 percent to the Labor and Workforce Development Agency for~~  
9 ~~enforcement of labor laws and education of employers and~~  
10 ~~employees about their rights and responsibilities under this code,~~  
11 ~~to be continuously appropriated to supplement and not supplant~~  
12 ~~the funding to the agency for those purposes; and 25 percent to~~  
13 ~~the aggrieved employees.~~

14 (j) ~~Civil penalties recovered under paragraph (1) of subdivision~~  
15 ~~(f) shall be distributed to the Labor and Workforce Development~~  
16 ~~Agency for enforcement of labor laws and education of employers~~  
17 ~~and employees about their rights and responsibilities under this~~  
18 ~~code, to be continuously appropriated to supplement and not~~  
19 ~~supplant the funding to the agency for those purposes.~~

20 (k) ~~This part is not intended to alter or otherwise affect the~~  
21 ~~exclusive remedy provided by the workers' compensation~~  
22 ~~provisions of this code for liability against an employer for the~~  
23 ~~compensation for any injury to or death of an employee arising~~  
24 ~~out of and in the course of employment.~~

25 (l) ~~The superior court shall review and approve any penalties~~  
26 ~~sought as part of a proposed settlement agreement pursuant to this~~  
27 ~~part.~~

28 (m) ~~This section shall not apply to the recovery of administrative~~  
29 ~~and civil penalties in connection with the workers' compensation~~  
30 ~~law as contained in Division 1 (commencing with Section 50) and~~  
31 ~~Division 4 (commencing with Section 3200), including, but not~~  
32 ~~limited to, Sections 129.5 and 132a.~~

33 (n) ~~The agency or any of its departments, divisions,~~  
34 ~~commissions, boards, or agencies may promulgate regulations to~~  
35 ~~implement this part.~~